

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 IMAGEKEEPER, LLC, a Nevada limited liability  
Company,

5 Plaintiff,

6 vs.

7 WRIGHT NATIONAL FLOOD INSURANCE  
SERVICES, LLC, a Delaware limited liability  
8 Company, and EVOKE TECHNOLOGIES  
PRIVATE LIMITED, an Ohio foreign  
9 corporation,

10 Defendants.

2:20-cv-01470-GMN-VCF

**ORDER**

11  
12 Before the Court is *Imagekeeper, LLC v. Wright National Flood Insurance Services, LLC, et al.*,  
13 case number 2:20-cv-01470-GMN-VCF.

14 Accordingly,

15 IT IS HEREBY ORDERED that a video conference hearing, to discuss the appointment of a  
16 Special Master, is scheduled for 11:30 AM, April 20, 2021. Attached for discussion at the hearing are (1)  
17 a proposed Order Appointing the Special Master, Michael J. McCue, Esq. and (2) Special Master's  
18 Affidavit.

19 IT IS FURTHER ORDERED that counsel/the parties must email Courtroom Administrator,  
20 Tawnee Renfro at Tawnee\_Renfro@nvd.uscourts.gov, with an email address to be used for the video  
21 conference hearing by noon, April 19, 2021.

22 IT IS ORDERED that the following Video Conference Instructions be adhered to as follows:

23 INSTRUCTIONS FOR THE VIDEO CONFERENCE

24 Instructions to the scheduled hearings will be sent via email thirty (30) minutes prior to the hearing  
25 to the participants email provided to the Court.

- Log on to the call ten (10) minutes prior to the hearing time.
- Mute your sound prior to entering the hearing.
- Do not talk over one another.
- State your name prior to speaking for the record.
- Do not have others in the video screen or moving in the background.
- No recording of the hearing.
- No forwarding of any video conference invitations.
- Unauthorized users on the video conference will be removed.

For anyone who is not a party to the action, the call-in telephone number is (888) 273-3658, access code: 3912597, and the phone must be on mute. The call must be made five minutes prior to the hearing time. The court will join the call and convene the proceedings. Recording of the proceedings is prohibited.

DATED this 15th day of April, 2021.



CAM FERENBACH  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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IMAGEKEEPER, LLC, a Nevada limited  
liability Company,

Plaintiff,

vs.

WRIGHT NATIONAL FLOOD INSURANCE  
SERVICES, LLC, a Delaware limited liability  
Company, and EVOKE TECHNOLOGIES  
PRIVATE LIMITED, an Ohio foreign  
corporation,

Defendants.

2:20-cv-01470-GMN-VCF

**(PROPOSED) ORDER APPOINTING  
SPECIAL MASTER**

Having considered the factors set forth in Fed. R. Civ. P. 53(a), the parties' Joint Status Report Pursuant to Minute Order Dated March 18, 2021 (ECF No. 144), and having given the parties notice and an opportunity to be heard, the Court hereby appoints Michael J. McCue, Esq. (Lewis Roca Rothgerber Christie LLP, 3993 Howard Hughes Parkway Suite 600, Las Vegas, Nevada, 89169; email: mmccue@lewisroca.com), as Special Master in this matter.

1. Authority for and Scope of Appointment. The Special Master is appointed pursuant to Fed. R. Civ. P. 53(a) to assist the court in addressing discovery issues relating to computer code and trade secrets law. The Special Master may consult with Erich Kohli, Esq. (Lewis Roca Rothgerber Christie LLP, 3993 Howard Hughes Parkway Suite 600, Las Vegas, Nevada, 89169), a registered patent attorney with expertise in software, in connection with performing the Special Master's duties pursuant to this Order. In addition, the Special Master may perform any additional duties consented to by the parties and Court pursuant to Fed. R. Civ. P. 53(a)(1)(A) and approved by the court.

2. Special Master's Duties and Authority. The Special Master must proceed with all reasonable diligence to undertake these responsibilities. The Special Master is not delegated any authority available to Special Masters as set forth in Fed. R. Civ. P. 53(c).

1 (a) On or before May 20, 2021, Wright Flood will provide to the Special Master, subject  
2 to the court's confidentiality order entered in this case (ECF No. 148), as Attorney Eyes  
3 Only documents, all documents and information it has withheld from production either as  
4 initial disclosures or in response to discovery on the grounds that ImageKeeper must first  
5 identify its alleged trade secrets with sufficient particularity to prevent ImageKeeper from  
6 being able to use the requested discovery to mold its trade secret allegations to create a  
7 case where one otherwise would not exist.

8 (b) On or before May 20, 2021, ImageKeeper will provide a new response to Interrogatory  
9 1, ECF No. 115, page 9, lines 2-4. This response must describe in detail each trade secret  
10 claimed in ImageKeeper's complaint with sufficient particularity to preclude the possibility  
11 that the details of each of ImageKeeper's six trade secrets claims could be modified based  
12 on Wright Flood's withheld discovery responses.

13 (c) Upon receipt of the items described in paragraphs a and b above, the Special Master  
14 will review these items and prepare an *in camera* report to Magistrate Judge Cam  
15 Ferenbach's chambers providing an opinion, with supporting analysis, of whether or not  
16 ImageKeeper's new response to Interrogatory 1, sufficiently defines ImageKeeper's six  
17 trade secrets claims so that they cannot be modified based on the discovery which was  
18 withheld by Wright Flood.

19 3. Ex Parte Communications.

20 (a) With the Court. The Special Master may have *ex parte* communications with the Court  
21 regarding (1) whether or not a particular dispute or motion is subject to the scope of the  
22 Special Master's duties; (2) assisting the Court with procedural matters, such as apprising  
23 the Court regarding logistics, the nature of the Special Master's activities, and management  
24 of the litigation; (3) any matter upon which the parties or their counsel have consented; (4)  
25

1 the application of Fed. R. Civ. P. 53; and (5) any matter, the subject of which is initiated  
2 by the Court.

3 (b) With the Parties and Counsel. The Special Master may have *ex parte*  
4 communications with the parties or their respective counsel regarding (1) purely procedural  
5 or scheduling matters; (2) resolution of privilege or similar questions, in connection with  
6 *in camera* inspections, and with notice to the other parties; and (3) any matter upon which  
7 the parties or their counsel have consented.

8 4. Material to be Preserved and Filed as the Record of the Special Master's Activities. With the  
9 exception of the Special Master's report submitted *in camera*, it is the duty of the parties and counsel, not  
10 the Special Master, to maintain any record of proceedings with the Special Master. The Special Master is  
11 not responsible for maintaining any records of the Special Master's activities other than his *in camera*  
12 report and billing records.

13 5. Compensation. The Special Master must be compensated at \$650/hour and must be reimbursed  
14 for all reasonable expenses and costs incurred in the performance of his duties. In the event Eric N. Kohli,  
15 Esq. assists the Special Master, his compensation will be at \$400/hour. These fees and costs must be paid  
16 ½ by the ImageKeeper, and ½ by Wright Flood. The Special Master will bill the parties on a monthly  
17 basis for fees and disbursements, with invoices that provide sufficient description to understand the work  
18 performed, but to protect the confidentiality of the information being reviewed. The parties must promptly  
19 pay the Special Master directly, upon receipt of the Special Master's invoice. The fees and costs may be  
20 reallocated by the Court in its discretion at the conclusion of the case. Upon the failure of a party to timely  
21 pay the Special Master's fees, the Court may enter judgment in favor of the Special Master and against  
22 the non-paying party.

23 6. Special Master's Affidavit. The Special Master's Affidavit required by Fed. R. Civ. P.  
24  
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1 53(b)(3)(A) has been executed and attached.

2 DATED this \_\_\_\_\_th day of April, 2021.

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4 CAM FERENBACH  
5 UNITED STATES MAGISTRATE JUDGE  
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10 Defendants.

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**SPECIAL MASTER'S AFFIDAVIT**  
**PURSUANT TO F.R.C.P. 53(b)(3)(A)**

11 I, Michael J. McCue, Esq., being first duly sworn, state as follows:

12 I have reviewed 28 U.S.C. § 455 and do solemnly swear or affirm that, to the best of my knowledge,  
13 information and belief, no grounds for disqualification exist under the statute pertaining to my  
14 appointment as a special master in the above matter.

15 The foregoing is true and correct to the best of my knowledge and belief.

16 Dated: \_\_\_\_\_

17  
18 \_\_\_\_\_  
Michael J. McCue, Esq.

19 STATE OF NEVADA )  
20 ) ss.  
21 City and County of Las Vegas )

22 Subscribed and sworn to before me by Michael J. McCue, Esq. on this \_\_\_\_ day of April, 2021.  
23 My commission expires: \_\_\_\_\_

24  
25 \_\_\_\_\_  
Notary Public